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5 UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
6 AT TACOMA

7 DIEAUKA Y. BRADLEY,

8 Plaintiff,

9 v.

10 TODD TERHAR,

11 Defendant.

Case No. C08-5499 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DISMISSING
PLAINTIFF'S COMPLAINT
WITHOUT PREJUDICE

12 This civil rights action comes before the Court on the Report and Recommendation of
13 the Magistrate Judge that Plaintiff's action be dismissed, without prejudice for failure to state a claim
14 under 42 U.S.C. § 1983. As detailed by the Magistrate Judge, the Plaintiff has failed to assert facts
15 that would support Section 1983 liability as to the Defendant.

16 Plaintiff has filed an objection to the Report and Recommendation contending that the
17 Magistrate Judge misconstrued Plaintiff's factual allegations in his First Amended Complaint.¹
18 Plaintiff's request for relief is an order from this Court to award the plaintiffs in a state court
19 proceeding 50% of the damage award entered against Plaintiff Bradley. Essentially, Plaintiff
20 contends that Defendant Terhar is responsible for 50% of the damages assessed against Plaintiff in
21 the state court proceeding and thus, Plaintiff is entitled to a 50% contribution from Defendant.

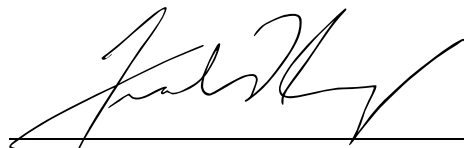
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24 ¹In Plaintiff's original and amended complaint it appeared to the Magistrate Judge that
25 Plaintiff was seeking to enforce a arbitration judgment awarded Plaintiff. Only in his objection to the
26 Report and Recommendation does it become evident that Plaintiff seeks contribution for a judgment
entered against him in the state court proceedings.

1 The complaint fails to allege any constitutional harm. Plaintiff simply seeks contribution from
2 Defendant in the state court proceeding. This is a matter that is properly the subject of the state
3 court where the judgment was obtained upon which Plaintiff seeks contribution.

4 The Court, having reviewed the Report and Recommendation of Magistrate Judge Karen L.
5 Strombom, objections to the Report and Recommendation, and the remaining record, does hereby
6 find and **ORDER**:

- 7 (1) The Court adopts, as modified in this Order, the Report and Recommendation;
8 (2) This action is **DISMISSED without prejudice** prior to service for failure to state a
9 claim. This dismissal **counts as a strike pursuant to 28 U.S.C. § 1515(g)**; and
10 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for any
11 Defendants who have appeared, and to the Hon. Karen L. Strombom.

12 DATED this 24th day of November, 2008.

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17 FRANKLIN D. BURGESS
18 UNITED STATES DISTRICT JUDGE
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